IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1213 OF 2005

IN

ARBITRATION PETITION NO.222 OF 2001

M/s.Rajsan Prints. ... Petitioner/Applicants.

vs.

M/s.Yogesh Corporation & Another ... Respondents.

Mr.R.V.Govilkar, for Petitioner.

Mr.Rakesh Jain, for Respondent no.1.

CORAM: D.K.DESHMUKH,J.

DATED: 3rd May,2005

P.C.:-

1. This is a Notice of Motion taken out for setting aside the order passed by the Prothonotary and Senior Master of this Court, dismissing the

Arbitration Petition filed by the petitioner for non removal of office objections. The order is dated 11.5.2001. It appears from record that initially time was given to the petitioner to remove the office objections upto 13.3.2001. The written intimation was given to the Advocate who was absent that he has to remove office objections on or before 13.3.2001 otherwise his petition would be rejected. It appears that by 13.3.2001 the objections were not removed, but the learned Advocate appeared before the Prothonotary on 11.5.2001 and requested for extension of time to remove the office objections and also requested for setting aside the order rejecting the petition for non removal of the office objections. Accordingly, the Prothonotary made order on 11.5.2001, setting aside the order rejecting the petition for non removal of office objections and extended time for removal of office objections till 22.6.2001. This order was passed in presence of the Advocate for petitioner. But the office objections were not removed till 22.6.2001, as a result of which the petition was rejected.

2. In the affidavit filed in support of Notice of Motion, the petitioner states that the petitioner was not aware of dismissal of its petition for non removal of office objections. The petitioner, however, does not disclose as to why the petitioner did not make any inquiry with its lawyer from the year 2001 till the year 2005 about this matter. The petitioner claims that the petitioner came to know that this petition has been rejected on 8.4.2005 when execution proceeding was taken out by the other side. The petitioner states that thereafter the petitioner contacted the Lawyer to find out from him as to why he did not

attend the Prothonotary's office for removal of office objections. According to the averments in paragraph 11 of the affidavit filed in support of Notice of Motion, the Lawyer informed the petitioner that due to his constant ill health he was unable to keep track of the matter and therefore, the objections remained to be removed. The exact statement reads as under:-

> " The Petitioners therefore, immediately approached their Advocate and upon inquiries it was revealed that the aforesaid petition stood dismissed/rejected for non removal of office objections. The earlier Advocate on record also informed the Petitioners that due to his constant ill health, he was unable to keep track of the matter and therefore, the objections remained to be removed."

3. Now there was no question of keeping track of the matter, because in presence of the lawyer time upto 22.6.2001 was given for removing the office objections. Except the statement referred to above, there is nothing on record from the Lawyer confirming that he was ill during the relevant time and therefore, he could not remove the office objections. In the absence of any written communication from the lawyer, in my opinion, the statement made by petitioner about the ill health of the lawyer is incapable of being believed, because even if it is assumed that during the year 2001 the concerned Lawyer was ill and therefore, he could not remove the office objections, the petitioner was definitely aware that it has filed the petition and it was for the petitioner to

find out as to what had happened to its petition.

4. I also do not find any justification given by the petitioner for the petitioner not to bothering about his petition during last four long years. Filing of Arbitration Petition under Section 34 of the Act operates to prevent conversion of the arbitral award in to a decree. Dismissal of a petition converts the Award into a decree which is capable of being executed. Restoration of the petition would result in again converting the Decree into an Award which is not executable. Thus, the order of restoration of the petition has drastic consequences so far as interest of the respondent in whose favour award has been made, is concerned. Obviously, therefore, such order cannot be passed without there being strong reasons for doing so. The petitioner will have to satisfy the Court that he was diligently prosecuting the petition, but for reasons beyond his control the petition came to be dismissed. In any case, such an order can definitely not be passed by the Court when the Court finds that attitude of the petitioner is casual. Perusal of the affidavit filed in support of Notice of Motion shows that the petitioner was not at all diligent in prosecuting this petition. As it was the duty of the petitioner to keep track of this petition and to be in constant touch with the Advocate who had been engaged by the petitioner. Despite this, I put it to the learned Counsel for the petitioner that the petitioner can still be given an opportunity of being heard on merit provided the petitioner establishes its bonafides by depositing substantial part of the decreetal amount in the Court. The learned Counsel sought time to take

instructions. After taking instructions, he stated that the petitioner is not in a position to deposit substantial part of the decreetal amount and that he can deposit at the most 25% of the principal amount. This clearly shows that this notice of motion has not been moved bonafidely but this has been moved only to stall the execution of the decree. Taking overall view of the matter therefore, in my opinion, setting aside the order of dismissing the petition would cause injustice to the respondent and therefore, Notice of Motion is disposed of.